## REMARKS

The following remarks are submitted to be fully responsive to the Official Action of **July 14, 2005**. Reconsideration and allowance of this application are respectfully requested.

As a preliminary matter, enclosed are copies of Information Disclosure Statements filed August 30, 2002, and September 27, 2002 for consideration by the Examiner.

Referring now to the present Office Action, claims 1-14 were rejected under 35 U.S.C. §103 as being obvious over U.S. Patent No. 5,638,443 to *Stefik et al.* As previously argued, claims 1-14 are patentable because independent claim 1 recites:

> transferring the digital work to a second user and setting the current user identification flag to correspond to the second user; and
>
> **allocating the usage rights between the first user and the second user such that the first user and the second user have an allocated percentage of the usage rights that is greater than zero percent and less than one hundred percent of the usage rights and such that a sum of the allocated percentage between the first user and the second user equals one hundred percent**; and

independent claim 9, as amended, recites:

> means for manipulating said current user identification module to change the current user identification flag of the identity information from a current user to a second user upon transferring the content from the first user to the second user,
>
> **wherein the usage rights are allocated between the first user and the second user such that the first user and the second user have an allocated percentage of the usage rights that is greater than zero percent and less than one hundred percent of the usage rights and such that a sum of the allocated percentage between the first user and the second user equals one hundred percent.**

The present Office Action correctly admits that the noted feature of allocating usage rights to be greater than zero but less than one hundred percent between the first and second user, as recited in independent claims 1 and 9, is not disclosed by the applied reference. The present Office Action then takes Official Notice that such feature is well known and that it would be obvious to modify the applied reference to include such a feature in order to "obtain greater flexibility in the distribution of usage rights." With respect to the taking of Official Notice, Applicants traverse the same and request the Examiner to provide a prior art reference disclosing the noted feature and to provide substantial evidence of motivation to combine such a prior art reference with the applied reference in order to achieve the invention recited in independent claims 1 and 9.

In addition, there are numerous ways to "obtain greater flexibility in the distribution of usage rights," such as by multicasting, and the like, and the Examiner has failed to show why one of ordinary skill in the art would be motivated to employ the allocation of usage rights in the manner claimed out of the numerous ways to obtain greater flexibility in the distribution of usage rights.

The present invention includes the recognition that conventional systems are directed to a full 100% transfer of usage rights or a full 100% retention of usage rights (i.e., 0% transfer). By employing usage rights that are allocated based on a percentage partially allocated between first and second users, as recited in independent claims 1 and 9, advantageously, various usage rights sharing scenarios can be effectuated between end users. For example, the noted feature can be used to (i) allow a first user to use or retain 20 minutes of 100 minutes of content usage and transfer the remaining 80 minutes of content usage to a second user, (ii) allow a first user to use or retain 20 minutes of 100 minutes of content usage and transfer 70 minutes of the remaining 80 minutes of content usage to a second user, wherein the remaining 10 minutes of the 80 minutes can be used as a part of a fee or transferred to a third user, etc., and the like.

The discovery of a problem and the solution thereto are part of the invention as a whole and which can be used to overcome an obviousness rejection. In this respect, the applied reference fails to appreciate the noted problem with conventional systems nor disclose the novel solution of allocation of usage rates in the manner claimed, absent impermissible hindsight reconstruction of Applicants' invention based on Applicants' disclosure. Accordingly, contrary to the assertion the present Office Action, the applied reference fails to teach or suggest the noted features recited in independent claims 1 9.

Dependent claims 2-8 and 10-14 are allowable on their on merits and for at least the reasons as argued above with respect to independent claims 1 and 9.

In view of the foregoing, it is submitted that the present application is in condition for allowance and a notice to that effect is respectfully requested. However, if the Examiner deems that any issue remains after considering this response, the Examiner is invited to contact the undersigned attorney to expedite the prosecution and engage in a joint effort to work out a mutually satisfactory solution.

Respectfully submitted,

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